

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-109327
Issued to: Manuel E. Pacheco

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1589

Manuel E. Pacheco

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title Code of Federal Regulations 137.30-1.

By order dated 20 May 1965, an Examiner of the United States Coast Guard at San Francisco, California, formally admonished Appellant upon finding him guilty of misconduct. The specification alleged that while serving as Boatswain on board the United States SS PRESIDENT HARDING under authority of the document above described, on or about 10 February 1965, 23 February 1965, and 18 March 1965, Appellant wrongfully used profane and abusive language in a belligerent attitude toward the Chief Mate.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the ship's log for 10 February 1965 and 18 March 1965 and testimony of the Master, Chief Mate, and Third Mate of the SS PRESIDENT HARDING.

Appellant testified under oath in his own defense.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order admonishing Appellant.

The entire decision order was served on 28 May 1965. Appeal was timely filed on 3 June 1965:

FINDINGS OF FACT

On all dates in question, Appellant was serving as boatswain aboard PRESIDENT HARDING under authority of his document.

On 10 February, 23 February, and 18 March 1965, Appellant used abusive language to the Chief Mate of PRESIDENT HARDING in a belligerent manner.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the evidence is insufficient to support the findings of the Examiner.

APPEARANCE: Jennings, Gartland and Tilly, San Francisco, Cal.,
by Eugene L. Gartland, Esq.

OPINION

I.

To explain the action finally taken in this case I must quote the Examiner's findings of fact in full:

"1. At all times in question Manuel E. Pacheco, the Person Charged, was serving under the authority of his Merchant Mariner's Document described hereinabove in the capacity of bosun aboard the S.S. President Harding.

"2. On 10 and 23 February and 18 March 1965, Manuel Pacheco exceeded the ship's line of authority discipline by excessively questioning, delaying and arguing about the explicit orders and instructions of the Chief Mate, Joseph Ryan."

These findings obviously bear little or no relationship to the matters set forth in the specification, and the Examiner has in fact failed to make findings on the matters alleged.

In his "Opinion," the Examiner states that whatever happen in fact, there were disputations between Appellant and the Chief Mate about which he would be presumptuous to say who was right and who was wrong. Before going on to commend counsel for his presentation of the case in such fashion as to have averted a much more stringent order, the Examiner say, ". . . I am not going to discuss the facts of this case in detail."

By abdicating his fact-finding authority, the Examiner places me in an unusual position. I could remand the case for adequate findings, but with the length for time involved already and with the Examiner's disinclination to make findings, there does not appear much profit in that direction. The charges could be dismissed, but action to that end would result in an obvious miscarriage of justice. To direct the case to another examiner for rehearing would be a waster considering, again, the lapse of time, and the difficulty of reassembling witnesses.

The only choice left is to substitute my findings for those of the Examiner. This I may do because the factual bases for my findings appear in the oral testimony and documentary evidence on the record, and the matters were litigated before the Examiner.

CONCLUSION

I conclude that the charge and specification were proved by proper evidence.

ORDER

It is ordered that the findings of the Examiner, termed "Ultimate Finding" in his decision, are set aside. Substituted therefor are the "Findings of Fact" herein.

The conclusion of the Examiner that the allegations of the specification "are proved to the extent set forth in the above ultimate fact findings. . ." is AMENDED to read that the charge of misconduct and a specification alleging that Appellant, while serving as alleged, on the dates alleged, used abusive language in a belligerent manner to the Chief Mate, are PROVED.

The order of the Examiner, entered at San Francisco, California, on 20 May 1965, is AFFIRMED.

P.E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C. this 7th day of November 1966.

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